

GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

BENCH - NB(SM)

Appeal No. E/2630/00/NB(SM)

Dated : 20/2/2001

CEGAT
NEW DELHI
To,

M/s Fixopan Machines (P) Ltd
Plot NO 102, Sector 25
Fasidabad (Haryana)

In the matter of :

M/s Fixopan Machines (P) Ltd

Appellant

vs.

CCE Delhi

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/288/01/NB(SM)
Dated : 15/2/2001 passed by the Tribunal under Section 35-C(1) of Central Excise
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to :

BU
Asstt. Registrar
NB(SM)

1. CCE Delhi
2. CCE/EE (Appeal) New Delhi
3. Chief Commissioner of Central Excise / Customs. New Delhi
4. Adv. / Consult. K L Handa, Constt
689, Sector -16, Fasidabad
(Haryana)
5. S.D.R -NB(SM)
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
10. Guard File.
11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
12. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, opp. Sachdeva P.T. College of
Defence Colony, New Delhi-110003
13. M/s Lex Site Com. Ltd., Mumbai
14. Office Copy
15. Con-cls.

BU
Asstt. Registrar NB(SM)

E. CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL
NEW DELHI

Appeal No. E/2630/00/NB(SM)

(Arising out of Order-in-Appeal No. 602-CE/DLH/2000 dated 23.5.2000 passed by the Commissioner, Central Excise (Appeals), New Delhi)

M/s. Fixopan Machines (P) Ltd. .. Appellants
(Rep. by Shri K.L. Handa, Consultant)

vs.

C.C.E. New Delhi .. Respondents
(Rep. by Shri A.K. Jain, JDR)

FINAL Order No. A | 288 | 01 | NB CS/m |
dt: 14.2.2001

Per K.K. Bhatia, Member (T):

This appeal is filed against the order dt. 23.5.2000 passed by Commissioner (Appeals), New Delhi. By this order, the lower Appellate Authority has confirmed the order passed by the Asst. Commissioner of Central Excise Division, Faridabad, in which, he had denied the modvat credit totally amounting to Rs. 70,634/- to the appellants on the input items - 'Static Converter' and the spare parts for the Static Converter. The Commissioner (Appeals) has observed that neither Static Converter nor the spares for the same were declared in the declaration dt. 16.1.97. The appellants filed the declaration on 7.4.1997 for Static Converter which is beyond the period of six months. Therefore, it is not valid for the purpose of allowing modvat credit on this item. She has further observed that the appellants' plea that Control Transformer components declared in the declaration dt. 16.1.97 would cover the spares for 'Static Converters' and that the Static Converters and Control Transformers are inter-changeable term is not acceptable, as the appellants

have not given any evidence to substantiate their claim.

2. The present appeal is against the above order of Commissioner (Appeals). Shri K.L. Handa, Consultant appearing for the appellants has reiterated the same submissions as made before the lower Appellate Authority but even at this stage, no evidence is produced in support of their assertion that the Static Converters and Control Transformers are inter changeable term and therefore, the declaration dt. 16.1.97 in respect of Transformers cases be made applicable to the Static Converters as well. Therefore, this submission of the ld. Consultant for the appellants cannot be countenanced. It is, however, further contended that admittedly, the declaration in respect of the Static Converter and the spares was filed on 7.4.97. He further submitted that as per the Annexure to the Show Cause Notice, the appellants had availed modvat credit amounting to Rs.4,440/- on the spares of Static Converter on 17.10.96 and another amount of credit of Rs.33,130/- on 22.11.96 on I.C.A.M. System and Static Converter. He submitted that out of this, an amount of Rs.26,320/- relates to the duty paid on the Static Converter. He submits that the credit relating to these amounts having been taken within a period of six months from the date of filing the declaration on 7.4.97, the same should be admissible to them. The ld. Consultant further contends that since there is no finding of malafide intention against the appellants, there is no ground to impose any penalty on them. Shri A.K. Jain, JDR for the respondents reiterates the findings arrived at by the lower authorities.

3. I have considered the submissions made before me. The present appeal is for the denial of the modvat credit of totally amounting to Rs.70,634/-. As per the above submissions of the ld. Consultant for the appellants, they took the credit of Rs.30,760/- within a period of six months prior to their filing their declaration in respect of the impugned inputs. These assertions of the appellants call for verification by the original authority. Accordingly, I set aside the order relating to the denial of modvat credit of this amount and remand the matter to the original authority for verification of the documents and to pass a de novo order in respect of the admissibility of the modvat credit of this amount. The appellants shall be afforded a reasonable opportunity of hearing before taking a final view in the matter.

4. The appeal of the party is thus allowed by remand relating to the aforestated amount only. The penalty imposed on them is also set aside. The appeal relating to the balance amount of Rs.39,874/- is rejected.

(Announced and dictated in the Court)

(K.K. Bhatia)
Member (Technical)

MS.
15.2.01